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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1132/2004

New Delhi this the 5th day of ^{January} 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Shri S.A. Singh, Member (A)

Sri P.K.Jena, son of Late D.C. Jena,
Resident of Qr.No.1117, Type-IV,
Sector-IV, R.K.Puram, New Delhi-110022

Presently working as Jr.Technical Officer
Grade-1, O/o the Chief Engineer, Aviation
Research Centre, East Block V, R.K.Puram,
New Delhi.

Applicant

(By Advocate Shri S.K.Das)

VERSUS

1. Union of India,
Through Cabinet Secretary,
Cabinet Secretariat, Govt. of India,
South Block, New Delhi-1
2. Special Secretary,
Aviation Research Centre,
(The Erstwhile Director, ARC),
East Block No.V, R.K.Puram,
New Delhi.
3. Deputy Director (Admn.) Air Wing,
Aviation Research Centre,
East Block No.V, R.K.Puram,
New Delhi-110066
4. S.B.Lakra, Junior Technical Officer-I,
Office of the Chief Engineering Officer,
Air Wing, Aviation Research Centre,
Sarsawa, Saharanpur, Uttar Pradesh
5. Azad Singh, Junior Technical Officer-1,
Office of the Chief Engineering Officer,
Air Wing, Aviation Research Centre,
Sarsawa, Saharanpur, Uttar Pradesh

Mahipalpur, New Delhi ^(X)

⊗ Corrected as per order dt. 08.7.05,
in M.A. No. 225/05.

22/7/05
D.R.(J)

Waleed Azeem



6. G. S Kunder, Junior Technical Officer-1,
Office of the Chief Administrative Officer,
Air Wing, Aviation Research Centre,
Mahipalpur, Delhi-110037

Respondents

(By Advocate Shri K.R.Sachdeva)

ORDER

(Hon'ble Shri S.A. Singh, Member (A))

The applicant along with respondents 4 to 6 appeared before the Selection Committee for recruitment to the post of Junior Technical Officer (JTO), Grade II in various trades. Their relative order in the merit list was as under:-

Sl.No.	Name	Selected in the trade
1	P.K.Jena	Motor
2	S.B.Lakra	Safety Equipment Worker (SEW)
3	Azad Singh	SEW
4	G.S.Kunder	SEW

After completion of 5 years of regular service they become eligible for consideration for promotion to JTO grade 1 in their respective trade. However, the actual promotion is subject to clearing the departmental promotion examination. Applicant and respondents 4 to 6 appeared in the departmental promotion examination and cleared the same.

2. Applicant learnt that respondents were holding a DPC for considering the candidature of persons/officials working in various trades for promotion to the post of JTO (Grade-1). He submitted a representation on 12.8.1992 for considering his candidature along with the others for the two posts vacant in his trade of Motor as he was fulfilling all the laid down criteria. However, his name was not considered by the DPC held on 17.12.1992. Applicant approached the Cuttack Bench of the Tribunal in OA 621/1992 challenging the action of respondents for not consideration his candidature by the DPC for promotion to the post of JTO Grade I. The Tribunal vide its order dated

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15.12.1992 directed the respondents to put up the candidature of the applicant for consideration by the DPC, subject to the condition that the recommendation of the DPC would be kept in a sealed cover. Respondents did not consider the candidature of the applicant for promotion to JTO 1 (Motor) in the aforesaid DPC because there was no promotional channel for the post of JTO-II (Motor) in the recruitment rules (RRs.). In order to comply with the directions of Tribunal in OA 621/1992, the respondents modified the existing RRs for providing promotional avenues and promulgated the same on 9.11.1993. By this amendment, the post of JTO Grade II (Motor) was included as a feeder post to the promotional post of JTO Grade I (Motor). Subsequent to promulgation of this rule, the respondents convened a review/supplementary DPC for considering the candidature of the applicant for promotion to the post of JTO Grade I (Motor) and kept the recommendation of the DPC in a sealed cover, in compliance with the interim order of the Tribunal.

3. The respondents issued promotion orders dated 3.2.1994 for promotion of JTO grade II to grade 1 for all trades but in view of the interim direction of the Tribunal in OA 621/1992, kept the recommendation of the DPC qua the trade held by the applicant in a sealed cover. The OA 621/1992 was finally decided by the Cuttack Bench of the Tribunal vide its judgement dated 17.5.1994 directing the respondents to give effect to the recommendations of the DPC by opening the sealed cover. After opening the sealed cover, the applicant was promoted to the post of JTO I (Motor) vide order dated 26.7.1994, which he joined on 27.7.1994.

4. Applicant made a representation dated 16.8.1994 requesting the respondents to give benefit of the promotion order with retrospective effect i.e. from 3.2.1994 i.e. the date when his juniors (respondents 4 to 6) had been promoted, with all consequential benefits. Applicant made a number of representations requesting the competent authority to fix his seniority in JTO grade 1 by carrying forward his inter-se-seniority



position in the post of JTO II according to the relative order in merit list for appointment to JTO grade II. According to the applicant he was assured that his seniority position in the post of JTO 1 would be same as the inter-se-seniority position in the feeder post of JTO II.

5. For promotion to Assistant Technical Officer (Misc.), the respondents issued a combined seniority list for all the trades of JTOs grade 1. In the said combined seniority list, the position of the applicant was correctly indicated at Serial No.2. The seniority of respondents 4 to 6 was assigned below that of the applicant ^{and} was in conformity with the inter-se-seniority with his seniority as JTO II and as such the applicant had no grievance thus far.

6. However, respondents circulated an amended and revised seniority list dated 26.3.2004 in which the inter-se-seniority position of the applicant was relegated at Sl. No.5 against the earlier position at Serial No.2 and he was shown below respondents 4 to 6, which is now the impugned order. The applicant made a representation against this revised seniority list and was informed that the seniority list had been prepared on the basis of promotion to JTO Grade 1 and as the applicant had been promoted later on, therefore, he is junior to respondents 4 to 6.

7. Aggrieved by this, the applicant has filed the present OA and seeks quashing of the impugned seniority list dated 26.3.2004 and the order dated 27.4.2004 rejecting the representation of the applicant for restoration of his original seniority as shown in the draft seniority list. The case of the applicant is that impugned seniority list has been drawn up against the settled principle inasmuch as the date of promotion to a post has no or little bearing for the determination of fixation of seniority in the present case. Further that the promotion of applicant to the post of JTO Grade I (Motor) was the out come of the supplementary DPC convened in terms of the interim direction of the coordinate



Bench of the Tribunal on 12.3.1993 wherein the case of the applicant was considered to be part of the DPC for promotion of respondents 4 to 6.

8. Applicant also made an averment that the Departmental Promotion Committee had not made any recommendation in respect of the relative and comparative merits of the individual candidates at the time of their promotion to the post of JTO Grade 1 as such inter-se-seniority position of the applicant vis-a-vis the respondents 4-6 has to be based on the seniority in the feeder post of JTO II. In the absence of any recommendation of the DPC in order of comparative merit of the promotees, including the applicant and the respondents 4-6 the seniority position has to be maintained. Moreover, the delay in promotion of the applicant was only because the recommendation of the DPC was ordered to be kept in a sealed cover by the interim order of the Cuttak Bench of the Tribunal. If there had been no such direction for keeping the recommendation of the DPC qua the applicant in a sealed cover his promotion order could have been issued simultaneously with the promotion orders of the respondents 4-6. If this had happened the inter-se-seniority position of the applicant in the feeder post of JTO II would have been retained. Finally the applicant pleaded that the draft seniority list of JTO Grade 1 in which the department had assigned the correct seniority position at Sl.No.2 i.e. above respondents 4-6 was in conformity with the inter-se-seniority position of the respondents in the feeder post of JTO II and the same was also in consonance with the applicable and prescribed guidelines and instructions on the subject as such the alteration and down gradation of the seniority of the applicant without any prior notice is arbitrary and illegal and as such the seniority list has to be quashed. In support of his claim, he relies in the case of **C. Shivashankar Vs. Bangalore Mahanagara Palika and Ors** (SLR 2002(1) (732) wherein it has been held:

"In services law, before publication of final seniority list by an employer, certain formalities requires to be observed. The first step in that regard is the preparation of provisional or draft gradation list and the same is required to be circulated to the employees concerned for the purpose of inviting objections from them. The

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next step is to consider the objections raised by the affected persons. The last and the final step is to publish the final gradation list. If for any reason, ranking assigned in the provisional gradation list has to be altered or reviewed the person/employee, who is going to be affected by such alteration or modification after considering the objections filed by the aggrieved person, a show cause notice requires to be issued to the employee concerned, inter alia directing him to show cause why his ranking assigned in the provisional gradation list should not be altered or modified. This practice is inspired by the principles of natural justice. Secondly, a mistake in the draft gradation list can be rectified, since any ranking assigned in the provisional or draft gradation list does not confer any right on the employee but before reviewing or altering the ranking assigned to an employee to his disadvantage, a show cause notice is a must and that would be in compliance of principles of natural justice. The Apex Court in the case of **S.K. Ghosh Vs. Union of India**, AIR 1969 SC 1385 was pleased to state, that seniority once fixed, creates a right in favour of a civil servant. Any alteration of the seniority would adversely affect the right of a civil servant. An alteration of seniority without notice to the person so affected would be opposed to principles of natural justice"

Thereafter, the applicant pleaded that alternation has been done without show cause notice. The applicant has also relied upon in the case of **Vasant Kumar Jaiswal Vs. State of M.P** (1985(3)SLR 598) wherein it has been held that seniority of persons promoted together would remain the same as in the lower cadre so long as they are officiating in the higher cadre irrespective of the date from which they joined their service in the promoted cadre. He also relied upon in the case of **R. Venkittarama Iyer Vs. UOI & Ors** 1990(7) SLR 444 wherein unilateral revision of seniority list after the applicant had been allowed to enjoy the seniority assigned to him for five years. Action liable to be quashed and in the case of **Harbans Singh Vs. UT Chandigarh and Ors.** (1987 (2) ATC 460) wherein it has been held that modification cannot be effected merely on the representation of a particular employee prior opportunity should be afforded to the persons likely to be affected in seniority and promotion.

9. The case was contested by the respondents stating that in the RRs dated 15.3.1977, there was no provision for promotion from the post of JTO II (Motor) to JTO 1 (Motor), hence the RRs were modified for providing promotion to JTO II (Motor) to JTO I (Motor) and were notified vide order dated 9.11.1993.

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10. Respondents 4-6 had joined the post of JTO II w.e.f. 20.2.1987, 11.2.1987 and 12.8.1987 respectively and they belong to the trade of SEW. RRs dated 15.3.1977 provided for promotion of JTO II (SEW) to JTO 1 (SEW) hence, they were promoted to the post of JTO 1 (SEW) w.e.f. 4.2.1994, 09-2-1994 and 4.4.1994 respectively i.e. prior to the promotion of the applicant.

11. We have heard the learned counsel for the parties and gone through the relevant documents on record. We have also gone through file No. ARC/AW-303/2000 Vol.II pertaining with the fixation of pay of JTO, made available to us by the respondents. The basis facts are not in dispute. The applicant was placed higher vis-à-vis respondents 4 to 6 in the merit list for appointment as JTO.II

12. Under the RRs, for promotion to the post of ATO(Misc.) are to be made from JTO 1 belonging to the trades of Armanent SEW, Crane, Motor and Workshop having at least 5 years service in their respective grades and subject to passing of departmental qualifying examination. A combined seniority list of JTO grade 1 in the various trades was prepared for promotion to ATO (Misc.) and circulated vide order dated 26.3.2004. In this seniority list, the applicant was shown below respondents 4 to 6 because respondents 4 to 6 had been promoted earlier than the applicant. The applicant become eligible for consideration for promotion to JTO 1 only after the modification of the RRs. The modification according to respondents can only take effect prospectively and not retrospectively. DPC for promotion to the post of ATO (Misc.) was convened by circulation on 29.3.2004 and respondents 4 to 5 were promoted vide order dated 18.5.2004. They joined the posts on 19.5.2004 and 21.5.2004 respectively. Respondents contended that the applicant could not be considered for promotion to the post of JTO I along with JTO Grade II of other trades by the DPC convened on 12-3-1993 as the RRs did not provide for promotion of JTO II (Motor) to JTO 1 (Motor). The RRs were also silent with regard to the manner in which this combined seniority list was to be formed.

⊗ corrected as per order
dt. 08-7-05, in M.A. No. 225/05.

22/7/05.

learned counsel



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In absence of any rules/guidelines for preparing the combined seniority list of JTO grade I in various trades the initial seniority list was prepared by carrying forward the inter se merit position in the selection list for appointment as JTO II. Subsequently some representations were received by the respondents and the combined seniority list was recast on the basis of date of promotion from JTO II to JTO 1. The applicant who had earlier been placed above respondents 4 to 6 on the basis of his position on the selection to JTO grade II merit list was placed below respondents 4 to 6 because he was promoted later to JTO grade 1.

13. Applicant has pleaded that he was not considered for promotion to JTO grade 1 alongwith other JTOs because the RRs did not provide an avenue of promotion to JTO II (Motor) whereas this avenue of promotion was provided for trades of respondents 4 to 6. If the RRs at that time had also provided for promotion of JTO II (Motor) to JTO 1, the applicant would have been promoted along with respondents 4-6. Moreover, the promotion to JTO I is within each trade and is thus dependent upon the fortuitous arising of vacancies in the trade, The date of promotion to JTO grade 1 cannot, therefore, be an equitable basis for preparing the combined seniority list. Rather the combined seniority list of JTO 1 should be based on the merit position obtained by individual JTO grade II in the selection merit list for appointment to JTO II.

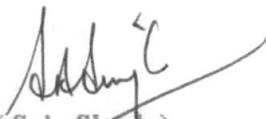
14. We find merit in the arguments of the applicant because the combined seniority list for promotion to ATO (Misc.) made on the basis of the date of promotion of an individual JTO grade 1 makes equals unequal. This is for the reason that initial appointment to JTO grade II in different trades is from a common selection merit list of similarly situated person. It is thus logical that individual who ranked higher in the selection list for appointment to JTO grade II should retain their merit position in the combined seniority list of JTO 1 unless a person has been passed over as per rules. In the


Warrant case



present case JTOs (grade II) are promoted as and when vacancies of JTO grade I arises in their respective trade. The date of promotion to JTO grade I is fortuitous as it is dependent upon availability of vacancies. If this date is utilized for preparing the combined seniority list of JTO I then it can happen, as in the case of applicant, that those who were higher in selection list for appointment to JTO II may become junior to those lower in merit. for reasons not connected with performance but merely on a promotion based on the fortuitous arising of vacancies of JTO grade 1 in their trade. Therefore, the date of promotion to JTO I for preparing the combined seniority list is unequitable. Accordingly the OA succeeds and the impugned seniority list dated 26.3.2004 is quashed. The respondents are directed to prepare a fresh combined seniority list by carrying forward the inter se merit position in the selection list for appointment to JTO grade II.

No costs.

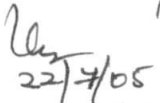

(S.A. Singh)
Member (A)


(M.A. Khan)
Vice Chairman (J)

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Note.

- ⊗ Corrections carried out as per order dt: 18-7-05 in M.A.No. 225/05 in O.A.No. 1132/2004.


22/7/05
D.R.(I)